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Comment on Registration of Mortgage Loan Originators
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Et al.

I would like to comment on the proposed rule that proposes amendments to rules to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act). The S.A.F.E. Act requires an employee of a bank, savings association, credit union or other depository institution and their subsidiaries regulated by a Federal banking agency or an employee of an institution regulated by the FCA (collectively, Agency-regulated institutions) who acts as a residential mortgage loan originator to register with the Nationwide Mortgage Licensing System and Registry, obtain a unique identifier, and maintain this registration.

As a mortgage broker and mortgage lender who is subject not only to registration but to education and testing, it is somewhat bemusing that depositories feel overburdened by merely having to be registered. The argument of financial hardship for small institutions is a cost that depositories should bear. In fact, it is grossly unfair for depositories to escape education and testing of their originators while other originators must bear that additional cost. This gives depositories an unfair advantage over other originators. It is quite possible that failure to require depositories to adhere to the same standards as other originators will create substandard originators. Banks are currently complaining that a new "super regulator" is needed that forces non-bank entities to play by the same rules as banks. It would be nice if banks were required to adhere to state rules that are increasingly stricter than mortgage standards for banks. Banks escape state licensing and many other state laws, including laws preventing prepayment penalties. Consumers we have encountered who were displeased with a depository's behavior have found it much more difficult to register a complaint with federal regulators than state regulators.

Consumers are familiar with checking state regulatory sites to find whether their originator is licensed. It is always difficult to wade through web sites of federal entities to find anything, much less who is licensed. Depositories regularly advertise in their solicitation of originators that they can be paid by 1099 rather than as W-2 employees. Most states prohibit such arrangements. Hopefully, depositories will be prohibited from utilizing originators who are not employees. That seems to be the spirit of the S.A.F.E. Act.

I am particularly concerned about the proposed exceptions for depository-employed originators. I see no reason that a bank originator should be exempt when state-licensed originators are required to meet higher

standards without exemption. It is well-known that an exception can provide immense holes in a regulatory system. How are federal regulators to know whether an originator has met de minimis triggers if there is no unique identifier assigned on a loan application? It become even more difficult when the period is "...the past 12 months." Most states set a standard of a calendar year. Even that will disappear for state-regulated entities.

The 25-origination limit for an entity before its originators require licensing is outrageous. These entities could originate loans exceeding 10 million dollars without any registration of it employees. Again, loopholes make it extremely difficult to track violations. It would be in the financial interest of the depository to spread its originations over numerous employees to avoid registration.

It is sad that depositories have sought ways to avoid having their employees identified and undergo criminal testing. Mortgage brokers were instrumental in raising these standards at the state level and promoting the standards found in the S.A.F.E. Act. For depositories to attempt to create exemptions for much lower requirements reflects poorly on the depositories and their regulators.

It is not unusual for small depositories to act as pure mortgage brokers. This is a tremendous disservice to consumers who would expect depositories to have at least the standards required of fellow mortgage brokers.

The idea of any originator suddenly being faced with registration and criminal checks when the count increases beyond five loans is naïve. Should the originator file for registration when they reach four loans? Suppose two applications come in that week, are they to turn one of them down? Criminal background checks must be done through the FBI. Current turn times are exceeding 60 days for state registrations. Even getting an appointment for fingerprinting can take a week or more. These de minimis exceptions are not only bad for consumers, they are bad for depositories.

The argument for delay on the basis of "...complex technical issues..." is nonsense. I helped in the development of the CSBS MU forms and computer screens. A federal regulator such as the OCC could be treated as a state and the depository like any other licensed entity. The proposed rule provides for a delay in implementation of 180 days after the Registry becomes operational and available for initial federal registrations. Individual originators could register now and be associated with an entity as that functionality becomes available.

Finally, there is no reason to exclude individuals who modify existing residential mortgage loans or provide any form of refinance. It is quite correct that registration would enhance consumer protection and reduce the likelihood of individuals who would commit fraud in these transactions. Identifying miscreants is important to the financial health of our depositories.

Closing loopholes and shortcuts rather than creating them should be high on the list of priorities of any regulator.

Sincerely,

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